IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

S.B. CRIMINAL APPEAL NO.309/1987
(Magan Bhai Vs. The State of Rajasthan)

S.B. CRIMINAL APPEAL UNDER SECTION 374 Cr.P.C. AGAINST THE JUDGMENT DATED 10.08.1987 PASSED BY THE LEARNED ADDITIONAL SESSIONS JUDGE, CHITTORGARH IN SESSIONS CASE NO.20/85 – STATE OF RAJASTHAN VS MAGAN BHAI.

DATE OF JUDGMENT : 18th JULY, 2007

P R E S E N T

HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. Gajendra Mehta for the appellant.
Mr. V.R.Mehta, Public Prosecutor.

BY THE COURT :

This appeal is directed against the judgment dated 10.08.1987 passed by the learned Additional Sessions Judge, Chittorgarh, whereby, the learned Judge convicted accused

appellant Magan Bhai for offence under Section 333 IPC and sentenced him for one year's rigorous imprisonment and to pay a fine of Rs.250/-, in default of payment of fine to further undergo three months' rigorous imprisonment.

The charge against the accused appellant was that on 8.11.82, when he went in the office of Archaeological Department, Chittorgarh for taking salary of his fellow employee Meghraj on his authority letter, cashier Indravijay Singh Rathore refused to give him the salary, upon which, he inflicted the fist blows on his head, but it was obstructed by Indravijay Singh Rathore from his hand and, thereby, he received grevious injury on his finger.

Upon this, police investigated the case and after investigation, challan under Sections 332, 333 IPC was filed against the accused appellant. The case was committed by the learned Magistrate and after hearing the arguments, accused appellant was charged under Section 333 IPC, to which, he pleaded not guilty. The prosecution examined eight witnesses and the statement of accused appellant was recorded under Section 313 Cr.P.C. and after hearing, accused appellant was convicted as indicated above.

Learned counsel for the accused appellant submits that appellant has retired from service and the incident took place on account of refusal to make payment by the cashier and the matter is of trivial nature, which was nothing but a small quarrel, therefore, lenient view should be taken. Whereas, learned Public Prosecutor has supported the judgment of the learned trial court.

I have gone through the judgment of the learned trial court and the evidence on record. The defence of the accused appellant is that the fracture on the finger was caused due to beating of fist blows on the table by the injured himself. But, this defence is not plausible on account of the statement of PW-1 Dr. R.D.Bhatt, in which, he has stated that this fracture cannot be caused by fist blows on the table. Since, the matter is twenty five years old and it arose out of the anxiety of accused appellant for getting salary of his fellow employee, therefore, ends of justice will meet if accused appellant is released on probation, which will not be a disqualification for him in the matter of pension etc. as he has retired since long.

Consequently, this appeal is allowed in part. While maintaining the conviction, the sentence of one year's rigorous imprisonment and fine of Rs.250/- for offence under Section 333 IPC awarded to the accused appellant is set aside and he is

released under Section 4 of the Probation of Offenders Act, provided he furnishes a personal bond in the sum of Rs.10,000/- and one surety in the like amount to the satisfaction of the learned trial court with the condition that he will keep peace and good behaviour and will not repeat the offence in future.

(DEO NARAYAN THANVI), J.

ms rathore